

**Roanoke Trade**

1475 E. Woodfield Road, Suite 500
Schaumburg, IL 60173-4903 USA
Phone: +1 847-969-1420
Toll-Free USA: +1 800-ROANOKE
Fax: +1 847-969-8200
www.roanoketrade.com

December 11, 2014

Ms. Karen V. Gregory, Secretary
FEDERAL MARITIME COMMISSION
800 North Capitol Street NW
Washington, DC 20573-0001

RE: Docket No 13-05
Public Comments of Roanoke Trade

Dear Ms. Gregory,

Roanoke Trade, a division of Roanoke Insurance Group Inc., ("Roanoke") is an insurance broker specializing in the insurance and surety products for international trade and third party intermediaries, including Ocean Transportation Intermediaries regulated by the Federal Maritime Commission. In conjunction with the insurance companies we represent, Roanoke manages the underwriting and claims administration of many of these products, including the Form FMC-48 OTI surety bond. A great deal of the proposed regulatory changes involve the administration of the licensing of OTIs, and we believe comment on those matters is better left to the regulated entities and their trade associations. Our expertise rests with the OTI Bond and we focus these comments on that portion of the proposed regulatory changes.

Roanoke is pleased that the FMC offered the opportunity to provide input in 2013 through the ANPRM and is pleased that this NPRM takes into account many of those ANPRM comments.

1. Roanoke supports the decision by the FMC to keep the level of financial responsibility unchanged at \$50,000 for OTI Freight Forwarders, \$75,000 for licensed OTI NVOCCs, and \$150,000 for unlicensed registered foreign NVOCCs. Additionally, Roanoke supports the elimination of 46 CFR 515.21(a)(4) and, by extension, it supports the elimination of the requirement that an OTI's amount of financial responsibility include higher amounts because of additional US branch locations.
2. Roanoke supports the modification to amend Section 515.23 to include court actions, court judgments, and claim payments as events which are required to be reported to the FMC by the financial responsibility provider. Under the regulations as they read today, the timeliness standard of reporting to the FMC is "promptly" as specified in the bond (but it is not set forth at all in the regulations). The FMC is proposing this activity be reported "promptly." We believe that a vague term such as "promptly" should be more specific and suggest that any such activity

be reported by the financial responsibility provider within 45 days. We also address this topic in 4.b. below, in the context that it relates to the language in the OTI bond forms.

3. Roanoke also supports the relocation of Appendices A through F from the end of Subpart C to the end of Part 515.

4. Docket No 13-05 proposes to amend text in the FMC-48 and FMC-69 documents. Similar changes are proposed for the other options of financial responsibility (the FMC-67, and FMC-68). To the extent these comments would carry over to those documents, please consider them applicable to those forms. However, Roanoke currently does not intend to promote or market those other forms and has not focused any of its review of the NPRM as it pertains specifically to Forms FMC-67 and FMC-68.

4.a. Many of the changes to the text of the FMC-48 and FMC-69 are minor in nature and intended to reflect updated references to the FMC's governing statute, as recodified into positive law in 2006. Roanoke supports these minor changes, but offers some comment and objection to some of the more significant proposed changes, as set forth below:

4.b. The bond language is amended to require that the surety "...immediately notify... [the FMC] of all claims made, lawsuits filed, judgments rendered, and payments made against this bond." As stated in item 2 above, Roanoke supports the additional elements that are required to be reported, and we also suggest that a more definite time be set forth and recommend 45 days in lieu of "promptly." Roanoke objects to the change from "promptly" as established in the current bond language to one that requires notification "immediately." The FMC has not explained why a more urgent notification requirement is necessary and Roanoke believes that the current standard of a prompt notification is a sufficient standard. Further, the proposed text in 515.23(c)(2) establishes "promptly" as the timeliness standard, and a different standard in the bond would be confusing. While we proposed that 515.23(c)(2) provide more clarity and establish 45 days as the timeliness standard, there needs to be consistency between the requirement in the regulations and financial responsibility instruments.

4.b. The FMC created a new paragraph in both FMC-48 and FMC-69 and inserted it as the proposed third paragraph in each. We are not certain of the need of it at all, however we do not object if this new paragraph only reads as follows:

Whereas, this bond is written to ensure compliance by the Principal with section 19 of the Shipping Act (46 U.S.C. 40901 – 40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR Part 515);

We believe the additional text proposed beyond the first phrase stated above is redundant or unnecessary. The requirement that the bond is available to pay judgments / settlements / penalties is already stated in the next paragraph (the "Now, Therefore..." paragraph) and its repetition in this paragraph is unnecessary. However, if the FMC determines it is necessary for

this language to exist, we strongly recommend that the two uses in the Form FMC-48 language of the term “Insured” be changed to “Principal” since principal is the appropriate term to refer to the OTI in a surety bond, and the term “Principal” is already defined in the first paragraph. “Insured” is an insurance term appropriate for the beneficiary of an insurance contract. A bond has no “insured” party, and a surety bond is never considered to be insurance.

Even if the FMC believes the second phrase is necessary and substitutes “Principal” for “Insured” in both places, Roanoke believes the last phrase of this paragraph is out of place in the FMC-48. This phrase discusses the condition that Form FMC-69 is secondary in responding to claims. Form FMC-69 has no bearing on FMC-48 and reference to it in FMC-48 is not appropriate. When the FMC created Form FMC-69, it was done so after the existing instruments (bond, insurance, and guaranty) were already established in the Part 515. FMC-69 contemplated that FMC-69 could supplement existing forms of financial responsibility (FMC-48, -67, and -68) to the extent any of them could not provide the full amount of the required financial responsibility imposed on the OTI. It is considered to be an excess layer of coverage and to be invoked only after the other instrument was exhausted. Accordingly, such language was incorporated into the text of the Group Bond (Form FMC-69), but it is not necessary to be incorporated into the FMC-48.

5. Finally, should the FMC go forward with its Final Rule on the changes to Part 515, Roanoke strongly encourages the FMC to give guidance on the timing of how OTIs should amend their financial responsibility instruments. Typically, regulatory changes become effective 30 days after publication of the Final Rule. The FMC has in excess of 7,000 OTI bonds in effect and may be hard-pressed to process all of those bond changes in such a short period of time.

5.a. The FMC may want to consider allowing the bonds to be brought into conformance with the new language and amount over a longer period of time, perhaps over 12 months at the bond’s anniversary date. New bonds filed after the language is enacted would, of course, follow the new language. Since the language changes are not materially substantive to the terms and conditions of the bond (even the requirement to notify the FMC of claim payments is effective in Section 515.23) a longer implementation period to bring the bonds into conformance does not necessarily place bond claimants in any jeopardy or diminished status.

5.b. Additionally, Roanoke would recommend the FMC permit the use of a properly executed rider to modify the language (and bond amount, if applicable). We believe that a rider is a very efficient way to achieve what is necessary. The alternative is to terminate the bond and file a new bond. Terminating and replacing means the FMC does double the work, or more if both are not done simultaneously because it imposes some notification requirements by the FMC to the OTI about the imminent termination of its bond. Terminating and filing a new bond may also require the OTI-NVOCC to have to update its rules tariff. A rider is the more efficient approach, and there is precedent to its use: the FMC accepted riders in 1999 when it last updated the language of the OTI bond forms.

We thank you for considering our comments and if any of these comments require further explanation or clarity, please contact me.

Yours truly,
Roanoke Trade

A handwritten signature in blue ink that reads "Matthew Zehner". The signature is written in a cursive, flowing style.

Matthew L. Zehner
Vice President – Surety Information and Communication